
IANDIORIO TESKA & COLEMAN

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MAY 20 2009

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May 18, 2009

Mail Stop PCT
Commissioner for Patents
Office of PCT Legal Administration
P.O. Box 1450
Alexandria, VA 22313-1450

SUBJECT: Applicant: Lawson et al.
 Serial No: 10/563,891
 Int'l. Filing Date: July 12, 2004
 For: APPARATUS FOR DETERMINING RESPIRATORY
 MUSCLE ENDURANCE OF A PERSON
 Examiner: Rafael Bacares
 Confirmation No.: 7208
 Docket No: GJ-275J

Dear Sir:

Enclosed is a Renewed Petition Under 37 C.F.R. §1.137(a) including one Exhibit in response to the Decision on Petition under 37 C.F.R. §1.137(a). Since May 16, 2009 fell on a Saturday, this Renewed Petition is timely filed on Monday, May 18, 2009.

If for any reason this RENEWED PETITION is found to be INCOMPLETE, or if at any time it appears that a TELEPHONE CONFERENCE with counsel would help advance prosecution, please telephone the undersigned or his associates, collect in Waltham, Massachusetts at (781) 890-5678.

If any payment during prosecution is found to be incorrect, please charge any deficiency or credit any overpayment to my Deposit Account No. 09-0002. A copy of this letter is enclosed for use by the Finance Branch in the event that it is necessary to make any charge or credit to my deposit account.

In addition, pursuant to Rule 1.136(a)(3), the Office is hereby authorized to treat any future reply requiring an extension of time as incorporating a request therefor. Also, any request or Petition for an Extension of Time notwithstanding an inadvertent reference in the Petition to a shorter period of time is to be treated as requesting the appropriate length of time.

Kindly acknowledge receipt of the foregoing by returning the enclosed self-addressed postcard.

Sincerely,



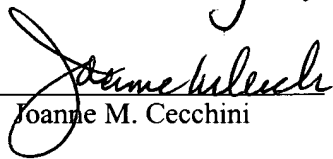
David W. Poirier
Reg. No. 43,007

DWP/jmc
Enclosures

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Page 2

CERTIFICATE OF MAILING

I hereby certify that the attached correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, VA 22313-1450, on May 18, 2009.


Joanne M. Cecchini

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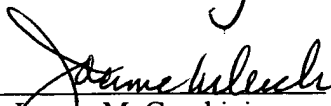
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Joanne M. Cecchini

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE


Applicant:	Lawson et al.	Examiner:	Rafael Bacares
Serial No:	10/563,891	Confirmation No:	7208
Int'l. Filing Date:	July 12, 2004	Docket No.:	GJ-275J
For:	APPARATUS FOR DETERMINING RESPIRATORY MUSCLE ENDURANCE OF A PERSON		

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May 18, 2009


Joanne M. Cecchini

RENEWED PETITION UNDER 37 C.F.R. §1.137(a)

In response to the DECISION ON PETITION UNDER 37 CFR §1.137(a) mailed March 16, 2009 (hereinafter "Decision on Petition"), Applicant respectfully requests reconsideration of the Petition for the revival of the subject patent application pursuant to 37 CFR §1.137(a) and MPEP 711.03(c)(I)(A) based upon the sequence of unavoidable events as described in the Applicant's Petition filed on December 1, 2008 and in further view of the remarks below and the attached Exhibit A.

In the Decision on Petition, the Examiner stated that the applicant's Petition satisfied items (1) and (2) under 37 C.F.R. 1.137(a), but failed to satisfy item (3), which requires a

showing to the satisfaction of the Director that the entire delay in filing the required Reply from the due date for the Reply until the filing of the grantable Petition was unavoidable. Specifically, the Examiner alleges that the Examiner has not complied with the requirements set forth in MPEP §711.03(c) which requires a copy of the docket record where the non-received Office Communication would have been entered had it been received and docketed for reply.

To establish a showing of non-receipt of the Notification of Missing Requirements as required, the applicant herein submits at Exhibit A a copy of the general docket report showing all replies docketed for a date of 2 months from the alleged mailing date of the Notification of Missing Requirements which was April 2, 2007. Had a response for replying to the Notification of Missing Requirements dated February 2, 2007 been docketed for the due date of April 2, 2007, it would have remained on the docketing system and would have been shown on the page shown in Exhibit A since a response had not been filed to the Notification. Since no such entry is shown, a response clearly was not docketed to reply to the Notification due on April 2, 2007. This is consistent with the applicant's assertion that the Notification of Missing Requirements was not received in the first place.

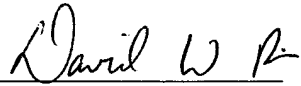
Accordingly, the Applicant has made the required showing that the Notification of Missing Requirements was not received by Iandiorio & Teska prior to the deadline for responding to the Notification of Missing Requirements, and that the failure to respond to the Notification of Missing Requirements was unavoidable.

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 USC 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares

that they are properly authorized to execute this Renewed Petition Under 37 C.F.R. §1.137(a) on behalf of the applicant; and all statements made of their own knowledge are true and all statements made on information and belief are believed to be true.

If for any reason this Renewed Petition is found to be incomplete, or if at any time it appears that a telephone conference with counsel would help advance prosecution, please telephone the undersigned or his associates, collect in Waltham, Massachusetts, (781) 890-5678.

Respectfully submitted,


David W. Poirier, Reg. No. 43,007
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Docket



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